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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/623,489

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Josh Schreider

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AKERMAN SENTERFITT

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EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/623,489	<b>Applicant(s)</b> SCHREIDER, JOSH	
	<b>Examiner</b> Viren Thakur	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: On page 4, line 8, the opening is numbered as item 22; however, this item number is used to denote the first end of said elongated dough member (item 14).
  2. On page 7, line 6, the third elongated dough member is numbered as item 108; however, in Figure 5, item 108 is not shown in the drawing.
  3. On page 8, line 20, the third elongated dough member is numbered as item 108; however, in Figure 7, item 108 is not shown in the drawing.
- Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above specified claims recite the limitation "pretzel configuration." It is unclear as to what type of

configuration is meant by a pretzel configuration; especially in light of the fact that pretzels can be made to the form of a multitude of configurations.

3. Claims 2-9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above specified claims begin with "the arrangement defined in claim..." Claim 1 is directed to a food product and not an "arrangement." An arrangement is not disclosed in claim 1; therefore, an arrangement does not appear to fit into one of the three statutory classes of invention (product, method of making or method of using).

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed.

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Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10, 13 and 14 of copending Application No. 10/642,541. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the co-pending Application 10/642,541 contain every element of claims 1-12 of the present application and as such fully encompass claims 1-12 of the present application. Although the copending application presents a second, third and fourth dough member with the added element that they are flattened and

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ribbon-like, such a configuration is merely a change of shape which is a matter of choice which a person of ordinary skill in the art would have found obvious. (See MPEP § 2144.04)

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claim 1-4, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coffee Cakes etc

([web.archive.org/web/\\*/http://www.geocities.com/red6012002/coffee\\_cakes\\_etc.html](http://web.archive.org/web/*/http://www.geocities.com/red6012002/coffee_cakes_etc.html)) in view of Berry et al. (Classic Home Cooking, 1995). Coffee Cakes etc. discloses a first elongated dough member formed into a pretzel configuration (Figure 5, Right most configuration) having a plurality of open spaces (Figure 5, Right most configuration) between portions of the cylindrical dough and said first elongated dough member having a first end and a second end (Figure 5, Right most configuration). Coffee Cakes etc. further discloses a second elongated dough member formed into a spiral configuration (Figure 3). Coffee Cakes etc. further discloses using cinnamon and sugar to flavor the dough for making a cinnamon roll (See first paragraph). With regard to instant claim 4, Coffee Cakes etc. discloses three open spaces (Figure 5, Right most configuration) and both first and second elongated dough member having the same composition, since it is taught to flavor the dough for making a cinnamon roll (See first paragraph). As recited in instant claim 3, Coffee Cakes etc. thus disclose a cinnamon bun dough composition (See first paragraph).

Coffee Cakes etc. does not disclose wherein said second elongated dough member is positioned within a first of said plurality of open spaces within said first dough member and wherein said first preselected composition is different from said second preselected composition. Coffee Cakes etc. further does not disclose a third and fourth elongated dough member formed into a spiral configuration and placed within one of the plurality of open spaces of said first elongated dough member.

Berry et al. disclose hot cross buns that comprise a second and third elongated dough member (see elongated dough members forming cross on figure on page 386 and Step 5) that is placed on top of said first dough member (See Figure, Page 386 and Step 5). Additionally, said second and third elongated dough members are comprised of short crust pastry, versus the first dough member that is comprised of unbleached white flour and yeast, thus teaching two different dough compositions.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Coffee Cakes etc. to place a plurality of dough pieces having a different composition on top of each other, as taught by Berry et al. for the purpose of making a singular food product that is the combination of a dough that has the taste of both an flavored white flour dough and a short crust pastry dough. Berry et al. thus provides evidence that it is known to compose a food product having different dough compositions wherein said dough compositions are baked together to form a single product. Whether an additional piece of short crust pastry was incorporated onto the bun to comprise a fourth elongated dough member is a matter of choice to one having ordinary skill in the art, especially given the positive teachings of the Berry et al. reference. The determination of the location of the secondary, tertiary or quaternary food product with respect to the first food product is also a change in shape and merely a matter of choice that one having ordinary skill in the art would have found obvious. For instance, instead of laying both the second and



third elongated dough members in the shape of a cross Berry et al. could have been placed with one end perpendicular to the other, but this is only a change in shape, as discussed above. Child (Baking With Julia, 1996) on, page 134 and 135 provide further evidence that it is known to arrange a plurality of dough pieces into a particular configuration for the purpose of baking a singular product having a specific shape.

9. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coffee Cakes etc. in view of Berry et al., as applied to claims 1-4 and 8-12, above, and in further view of Wetzel's Pretzels ([www.wetzels.com/experience.php](http://www.wetzels.com/experience.php)).

Coffee Cakes etc. in view of Berry et al. disclose a food product comprising a first and second elongated member wherein said first elongated member has a pretzel configuration and said second elongated member has a spiral configuration which is placed on the first elongated dough member, as applied above.

Coffee Cakes etc. does not disclose wherein said ends of first elongated dough member are formed into a spiraled second and third elongated dough member that are disposed within said plurality of openings.

Wetzel's Pretzels discloses a food product comprised of dough having a pretzel configuration (See Figure next to 1994 and 1997 and 1999) and further teaches wherein said dough having a pretzel configuration is a cinnamon

flavored dough composition. Wetzel's Pretzels further teaches dough having a pretzel shaped configuration wherein said dough is a composition other than a cinnamon roll composition, such as Almond Crunch (See Figure next to 1997) or Plain (See Figure next to 1994). Thus, it is suggested to one having ordinary skill in the art that a food product exists that can comprise both a pretzel and a cinnamon roll.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Coffee Cakes etc in view of Berry et al. to comprise a dough product having a cinnamon flavor and a pretzel flavor, as taught by Wetzel's Pretzels for the purpose of providing a snack that caters to the varying tastes of consumers. Wetzel's Pretzels provides evidence of this, since it is disclosed that there exists a pretzel that further comprises a cinnamon bun. It is known that a cinnamon bun and a pretzel, although flavored differently, are still just dough products. Dough without cinnamon seasoning is considered to be pretzel dough with only the seasoning delineating a difference between the two. For instance, partially seasoning pretzel dough with cinnamon and sugar suggests a product that is a single dough member having two different compositions. Extending the ends of a pretzel shaped dough product to form spirals would not be any different than extending the ends to form any other configuration, and is only a change in shape that would have been a matter of choice to one having ordinary skill in the art. Wetzel's Pretzels thus provides motivation that the shape of a dough product and the flavoring on the dough

product would not provide a patentable feature, since the concept of flavoring a dough and shaping said dough is still the same.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Google Groups discloses AUNTIE ANNE'S pretzels that are cinnamon flavored. Pretzel Time discloses cinnamon sugar pretzels in addition to other flavored pretzels such as parmesan, garlic, sour cream and onion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Patent Examiner  
Art Unit: 1761



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